

FEDERAL COMMUNICATIONS COMMISSION

DA 00-2771

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Alberta, Virginia and  
Whitakers, North Carolina )

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MM Docket No. 00-245  
RM-9971

**NOTICE OF PROPOSED RULE MAKING****Adopted: November 29, 2000****Released: December 8, 2000**

Comment Date: January 29, 2001

Reply Comment Date: February 13, 2001

By the Chief, Allocations Branch:

1. The Allocation Branch has before it the petition for rule making filed by Broomfield Broadcasting, Inc. ("petitioner"), requesting the substitution of Channel 276C3 for Channel 276A at Alberta, Virginia and the reallocation of Channel 276C3 from Alberta to Whitakers, North Carolina as the community's first local aural transmission service, and the modification of Station WAQD(FM)'s license to specify Whitakers as its community of license. Petitioner states that it will apply for the channel, if allotted to Whitakers.

2. Petitioner states that Whitakers, an incorporated community and has a 1990 U.S. Census population of 860 people. Whitakers, according to petitioner, has its own elected city government, a post office, fire and law enforcement protection and a public library.<sup>1</sup> Thus, petitioner concludes that Whitakers is deserving of its own first FM local service. Petitioner also states that the reallocation of Channel 276C3 to Whitakers will not result in the loss of service to Alberta which the public has come to rely upon since the current WADQ(FM) facility has not yet been constructed, citing Genoa, Mt. Morris and Oregon, Illinois, 14 FCC Rcd 2930 (1999). As a Whitakers station, petitioner states that the station will provide service to 860 people, which represents an increase of over 500 people from that of an Alberta station.<sup>2</sup> In addition, petitioner proposes the allotment of Channel 299A to Alberta

<sup>1</sup> Petitioner notes that other businesses located in Whitaker include, Whitakers Auto Supply, Whitakers Food Center, Whitakers Gin Company, Whitakers Medical Center, Whitakers Pharmacy and Whitakers Used Tires.

<sup>2</sup> Petitioner notes that as a Alberta facility, WAQD(FM) would provide reception service to 21,543 people over 1,426 square kilometers. By contrast, facilities of Channel 276C3 at Whitakers would provide service to a population of 172,026 people over 4,789 square kilometers, an increase of 150,483 people, or nearly 700%.

as a replacement for Channel 276A and commits to apply for the facilities on Channel 299A if the Commission grants its rule making proposal for Alberta. Petitioner states that overall its proposal will provide a first local service to 1,197 people in both communities.

3. We believe petitioner's proposal warrants consideration since the substitution of Channel 276C3 for Channel 276A at Alberta and reallocation of Channel 276C3 to Whitakers could provide Whitakers with its first local aural transmission service. Channel 276C3 can be allotted to Whitakers in compliance with the Commission's minimum distance separation requirements with no site restriction.<sup>3</sup> Channel 299A can be allotted to Alberta in compliance with the Commission's minimum distance separation requirements with no site restriction.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Alberta, Virginia	276A	299A
Whitakers, North Carolina	---	276C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before January 29, 2001 and reply comments on or before February 13, 2001 and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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<sup>3</sup> The coordinates for Channel 276C3 at Whitakers are 36-11-23 NL and 77-51-09 WL. The coordinates for Channel 299A at Alberta are 36-51-56 NL and 77-53-12 WL.

Broomfield Broadcasting  
c/o John Trent, Esq.  
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(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.